IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4215 of 2007()

CRA.353/2004 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR
CC.1041/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

JOHNSON, S/O.POULOSE, KACHAPPILLY
VEEDU, PURANATTUKARA VILLAGE, RESIDING IN
AKKARAPATTIYEKKAL KOCHAPPAN'S HOUSE.

BY ADV. SRI.P.VIJAYA BHANU
SRI. P.M.RAFIQ

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 4215 of 2007

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Dated: 11-12-2007

ORDER

The petitioner who was the sole accused in C.C. No. 1041 2000 on the file of the J.f.C.M., Palakkad for offences punishable under Sections 292 (2)(a) I.P.C. and Sec. 3(i)(a) of Young Person Harmful Publication Act, challenges the conviction entered and the sentence passed concurrently against him for an offence punishable under Section 292 (2)(a) I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 13-11-2000 at about 6.15 p.m. the accused was found in possession of obscene magazines for the purpose of sale near Manchilal, East Nada, Guruvayoor. He has thereby committed the aforesaid offences.

3. On the accused pleading not guilty to the charge framed against him by the courts below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined four witnesses as P.Ws 1 to 4 and got marked 2 documents as Exts.P1 and P2 and six material

objects as MOs 1 to 6.

4. After the close of the prosecution evidence, the accused was questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He examined one witness as D.W.1 and got marked one book as Ext.D1.

5. The learned Magistrate, after trial, as per judgment dated 31-5-2004 acquitted the accused of the offence punishable under Section 3(i)(a) of Young Person Harmful Publication Act but convicted him under Section 292 (2)(a) I.P.C. For the said conviction he was sentenced to simple imprisonment for one month and to pay a fine of Rs. 1,000/- and on default to pay the fine to suffer simple imprisonment for one month. Eventhough the revision petitioner filed an appeal before the Sessions Court, Thrissur as Crl. Appeal No. 353 of 2004 , as per judgment dated 19-6-2007, the Addl. Sessions Judge, (Fast Track Court No. II-Adhoc), Thrissur dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence, this Revision.

5. The learned counsel for the revision petitioner assailed the conviction entered and the sentence passed on the following

grounds:-

There is nothing to indicate that the accused was found selling obscene books so as to attract the offence punishable under Section 292 (2)(a) I.P.C. The observation in paragraph 6 of the trial court's judgment only shows that the accused was found near the books and at that time there was nobody to buy the books. The specific suggestion put to the prosecution witnesses and attempted to be proved through D.W.1 was that the accused had gone there to collect the amount due to him. The prosecution has failed to establish that he was selling the obscene books. Moreover, the lower appellate court did not look into the allegedly obscene books before confirming the conviction.

6. I am afraid that I cannot agree with the above submissions. It was P.W.4 who was the Sub Inspector of Police who detected the offence. He along with his police constables (PWs 1 and 2) were present at the time of detection of the offence. On 13-11-2000 at about 6 p.m. they found the accused near Manchulal junction at East Nada, Guruvayoor selling obscene books six of which were seized under Ext.P1 mahazar to which P.W. 3 is an attester. Since the lower court records were not accompanied by the material objects this court summoned the material objects namely MOs 1 to 6

to ascertain whether they satisfy the definition of "obscene books" within the meaning of 292 (2)(a) I.P.C. A perusal of MOs 1 to 6 shows that they contain the nude and lascivious photographs of females and also sexually boosted stories. The learned Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility had chosen to believe the prosecution witnesses including P.W.4 the detecting officer. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. Under Section 292 I.P.C., the punishment imposed for the first offence is imprisonment of either description for a term which may extent to two years with fine which may extend to Rs. 2000/-. Thus, a sentence of imprisonment is mandatory for the offence. As against two years, the courts below were indulgent enough to sentence the revision petitioner only to imprisonment for one month and as against Rs. 2000/- the courts below have imposed a fine of Rs. 1,000/- only. An offence of this nature needs to be dealt with awarding stringent punishment including penal servitude which alone can act as an effective disincentive. I do not find any good ground to interfere with the sentence imposed on the revision petitioner as well.

Resultantly, this Revision is devoid of any merit and is dismissed confirming the conviction entered and the sentence passed against the revision petitioner.

V. RAMKUMAR,
(JUDGE)

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